

CIVIL MISC. APPEAL No. 1431 of 2004

STATE OF RAJ & ORS
V/S
NARAYAN LAL

Mr. NARENDRA MOOLCHANDANI, DY.GA, for the appellant

Mr. MAHENDRA TRIVEDI, for the respondent

Date of Order : 12.4.2005

HON'BLE SHRI N P GUPTA, J.

ORDER

Heard learned counsel for the parties, and perused the record, which was requisitioned vide order dated 16.2.2005.

By the impugned order, the learned trial Court has rejected the objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 against the award being made rule of the court.

Assailing the impugned order, three submissions were made. Firstly, that the arbitrator has misconducted, inasmuch as, the arbitrator was not qualified to be appointed as arbitrator, because he had been concerned with the grant of work earlier.

The learned trial Court has negated the objection by holding that the arbitrator was appointed with consent of the parties. I find from the record that actually, proceedings were initiated by the contractor under Section 20 of the Arbitration Act, 1940, and in those proceedings vide order dated 16.5.96, Shri D.R.Joshi was appointed as the sole arbitrator. Thereafter on application being filed by the contractor, the matter was taken up as Mr.Joshi was not willing to continue as arbitrator, thereafter the appellants submitted their penal of sole arbitrators for being appointed in place of Mr.D.R.Joshi, and that penal included the name of Shri R.K.Chatur. It is from out of this penal that the contractor agreed for appointment of Shri R.K.Chatur. Thus, it was vide order dated 14.9.99, that the Court with consent of both the parties, had appointed Shri R.K.Chatur as arbitrator in place of Shri D.R.Joshi. In that view of the matter, it doesn't lie in the

mouth of appellant to say, that the arbitrator was not qualified. It was for the appellant to take care in suggesting the name of the arbitrator. It is another thing that the only disqualification alleged is that it was the arbitrator himself, who has imposed the penalty on the contractor. As a matter of fact, if this were the ground, this would have been an objection available to the contractor about the arbitrator being prejudice against the contractor, having imposed penalty earlier, but then it is not an objection available to the appellant. Thus, I do not find any error in this finding of the learned trial Court.

The next submission made is that in this matter, the contractor himself had delayed the work, and penalty of 0.01% was imposed, and therefore, the impugned award could not be passed. In this regard, I have gone through the award, and find that while deciding issue No.1, the arbitrator had positively found that the delay in completion of the work was on account of the breaches committed by the department, and for this purpose, the arbitrator has relied upon Annexures-C/3, C/4 and C/5(b). Thus, the aspect has been considered by the arbitrator, and merits of the finding of the arbitrator are not open to challenge before the learned trial Court under Section 34 as none of the grounds available under Section 34 as have alleged.

The last submission made is that the arbitrator has erred in awarding interest @ 15% per annum. In my view, this contention also has no force.

The question of entitlement of the contractor to grant interest is no more res-integra in view of the Constitution Bench Judgment of Hon'ble the Supreme Court in "Secretary, Irrigation Department, Govt. of Orissa Vs. G.C.Roy" reported in 1992 (1) SCC 508, and the subsequent judgments, including that in "M/s.Jagdish Rai & Brothers Vs. Union of India" reported in AIR 1999 SC 1258.

So far the rate of interest is concerned, learned counsel relied upon, one judgment of Hon'ble the Supreme Court in "State of Rajasthan & Anr. Vs. M/s. Nav Bharat Construction Co." passed in Civil Appeal No.8115/2001 decided on 27.11.2001. Suffice it to say that in

that judgment, it was found that the question of entitlement of interest, and its rate, was not at all gone into by the Courts below, and it was before the Hon'ble Supreme Court only, that grant of interest was opposed on the anvil of Clause (23) of the agreement between the parties, which contention was negatived by the Hon'ble Supreme Court, and the contractor was found entitled to get interest in absence of any evidence to the contrary. With this, the award of interest @ 15% by the District Court was reduced at 6%. In my view, in given case and in given circumstances, the Hon'ble Supreme Court has reduced the interest awarded in a particular case, but I do not find any ratio having been laid down in the said judgment, holding that the contractor should be awarded interest @ 6%, or that the trial Court or the Appellate Court is entitled to interfere in the rate of interest as awarded by the arbitrator.

Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA), J.

/tarun/